

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

November 18, 2015

The Board of Agriculture, Trade and Consumer Protection met on November 18, 2015, at the Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Board Room, Madison, WI. The meeting was preceded by public notice as required by Wis. Stat. §19.84.

Call to Order

Board Chair Andy Diercks called the meeting to order at 9:05 a.m.

Members Present

Andy Diercks, Dennis Badtke, Miranda Leis, Nicole Hansen, Dean Strauss, Greg Zwald, and Doug Wolf were present. Paul Palmby and Mark Schleitwiler were absent.

Minutes

Motion

Miranda Leis made a motion, seconded by Dennis Badtke, to approve the September 23, 2015, Board minutes. Motion approved unanimously.

Aldo Leopold Conservation Award

Diversified farmers, Dave and Leslie Meuer of Chilton, were recognized as the 2015 winners of Wisconsin's Aldo Leopold Conservation Award. The Aldo Leopold Conservation Award, which was presented by the Sand County Foundation, the Wisconsin Farm Bureau, and DATCP Secretary Ben Brancel, honors Wisconsin landowner achievement in voluntary stewardship and management of natural resources.

The Meuers raise beef, hogs, broilers and egg layers, and grow conventional and specialty grain crops, strawberries, and pumpkins. Their farm includes beehives, a maple syrup operation, and a corn maze. During the summer months, they host farm-to-table dinners and bring in local chefs to prepare meals featuring produce grown on the farm.

Public Appearances

Tressie Kamp, staff attorney representing the Midwest Environmental Advocates, Inc. (MEA), appeared before the Board regarding the final report and recommendations from the 2014 Livestock Siting Technical Expert Committee. MEA is a nonprofit environmental law center that provides legal and technical assistance to communities and families working for clean air, clean water, and clean environment. Ms. Kamp urged the Board to incorporate the Technical Committee findings into a revision of the Siting Law, ch. ATCP 51, and to formally adopt the latest technical and nutrient management standards. The revised Siting Law should clarify and restore the ability of local governments to protect public health and safety while encouraging more robust local compliance monitoring. MEA also supports a revision to the current Siting Law setback requirements and recommends changes to address odor implications resulting from current industrial livestock practices.

ATCP 10/12 – Animal Disease and Movement; Animal Markets, Dealers, and Truckers (Hearing Draft)

Dr. Paul McGraw, Division Administrator for the Division of Animal Health, presented the Hearing Draft for chs. ATCP 10 and 12, related to Animal Disease and Movement, and Animal Markets, Dealers, and Truckers.

The Division of Animal Health received feedback from veterinarians and industries regulated by the U.S. Department of Agriculture, as well as individuals licensed through the division, that certain provisions in chs. ATCP 10 and 12 were unclear, or inconsistent with other rule provisions, related statute provisions, or federal regulations.

The proposed rule will make various modifications to provide flexibility, clarity, and consistency. The proposed rule makes the following modifications:

- Definitions and terms.
- Disease testing and reporting.
- Official individual identification.
- Tuberculosis testing and control.
- Bovine import tuberculosis requirements.
- Certificates of veterinary inspection (CVI).
- Federally approved livestock marketing facility.
- Application information.
- Slaughter swine identification.
- Equine infectious anemia.
- Farm-raised deer (FRD).
- Fish farms.
- Elephant imports.
- Animal markets, dealers, and truckers.

- Waivers.

Motion

Dennis Badtke made a motion, seconded by Dean Strauss, to approve the Hearing Draft of chs. ATCP 10 and 12. Motion approved unanimously.

ATCP 82 Bulk Milk Collection, Sampling and Transportation (Hearing Draft)

Dr. Steve Ingham, Division of Food Safety Administrator, presented the ch. ATCP 82 Hearing Draft to the Board.

Wisconsin has close to 10,000 licensed dairy farms shipping their milk to one of more than 400 licensed dairy plants in the state, or to a licensed dairy plant in another state. Approximately 4,000 bulk milk tankers from Wisconsin and other states deliver milk to Wisconsin dairy plants.

Prior to the adoption of 2015 Act 55, Wisconsin required the owner of bulk milk tankers used to transport Grade “A” milk to hold a license and a Grade “A” permit for each tanker. The Department charged a licensing fee of \$45 and issued a Grade “A” permit as an endorsement on the license. 2015 Act 55 revised s. 97.21, Stats., eliminating bulk milk tanker licensing and license fee requirements while aligning Wisconsin with most other states by removing the requirement that bulk milk tanker operators hold both a tanker license and a Grade “A” permit.

This rule incorporates the recent statutory changes eliminating licensing and license fee requirements into ch. ATCP 82. The rule maintains the Grade “A” permit for the bulk milk tankers at no charge, but does adopt a modest increase in the re-inspection fee to cover the Department’s cost for those re-inspections. Re-inspections are conducted when the Department finds that a tanker has a regulatory violation. The proposed rule increases the re-inspection fee from \$45 to \$60. Few bulk milk tankers receive re-inspections. In the past year, only 13 tankers were re-inspected.

As part of this rule revision, the Department also proposes to remove a confusing provision related to employees of companies that own bulk milk tankers. The current rule states that an employee who drives a bulk milk tanker is not required to obtain a separate Grade “A” permit to drive the truck, if the owner of the bulk milk tanker already has a Grade “A” permit for the tanker. However, this provision is unnecessary as an employee who drives a bulk milk tanker already bearing a Grade “A” permit would never be expected to acquire a separate Grade “A” permit. The original intent of the rule was to exempt an employee who drives a bulk milk tanker transporting and holding Grade “A” milk from the requirement to hold a bulk milk weigher and sampler license if the employee does not weigh or sample the milk. This requirement is implicitly stated in s. ATCP 82.04(1).

Motion

Miranda Leis made a motion, seconded by Nicole Hansen, to approve the Hearing Draft of ch. ATCP 82. Motion approved unanimously.

ATCP 70/71 Food Processing Plants; Food Warehouse and Milk Distributors (Hearing Draft)

Dr. Steve Ingham, Division of Food Safety Administrator, presented the chs. ATCP 70 and 71 hearing draft to the Board.

Under state law, food warehouses (ch. ATCP 71) and food processing facilities (ch. ATCP 70) are distinct entities that require separate licensing. Under current rules, a food warehouse that engages in food processing activities, even low-risk repacking of already-packaged foods, must hold separate food warehouse and food processing plant licenses. The proposed rule change exempts the following from food warehouse activities that must be done under a food processing plant license: 1) re-packing foods that are already packaged and labeled for retail sale into containers for further distribution, 2) combining two or more individually packaged and labeled food items into a combination package for retail sale, and 3) manufacturing ice that is used for temperature control of food during shipment or storage.

This rule also modifies food warehouse regulations to achieve consistency with federal and state regulations related to the storage of fish, fishery products, and molluscan shellfish. These products pose unique threats to human health, including histamine production in temperature-abused fish species such as tuna, and transmission of *Vibrio vulnificus* via improperly harvested or handled molluscan shellfish. As part of the existing federal-state cooperative program for shellfish safety, state regulations require that Wisconsin firms, including food warehouses, that ship, shuck and pack, re-pack, or re-ship molluscan shellfish for interstate commerce must hold a no-fee licensee-dealer certification. The proposed rule clarifies this requirement in ch. ATCP 71 (Food Warehouses).

Federal regulations include the storage of fish, fishery products, and molluscan shellfish in the definition of processing of these products, and therefore firms performing these activities are subject to Hazard Analysis and Critical Control Point (HACCP) regulations. Wisconsin food processing plant regulations (ch. ATCP 70) adopt, by reference, the federal HACCP regulations for processing of fish and fishery products done in a food processing plant (21 CFR 123, cited in s. ATCP 70.18). Most Wisconsin food warehouse operators are aware of, and follow the HACCP regulations without being explicitly required to do so in Wisconsin rules. The proposed rule clarifies that the federal HACCP requirements also apply to operators of warehouses handling fish, fishery products, and molluscan shellfish, and will be enforced by the Department.

This proposed rule harmonizes the food warehouse refrigeration temperature requirement for eggs with the requirement found in ch. ATCP 88 (Eggs). This harmonization will remove

confusion over the maximum refrigeration temperature for egg producers or egg handlers who receive eggs from another egg producer or egg handler and store the eggs for more than 24 hours before selling them.

Finally, this proposed rule clarifies which portions of new federal regulations implementing the FDA Food Safety Modernization Act (FSMA) must be followed by Wisconsin-licensed food warehouse operators.

Motion

Dennis Badtke made a motion, seconded by Miranda Leis, to approve the Hearing Draft of chs. ATCP 70 and 71. Motion approved unanimously.

Food Safety Modernization Act (FSMA) (Report)

Dr. Steve Ingham, Division Administrator of the Division of Food Safety, provided an update to the Board regarding the FDA Food Safety Modernization Act (FSMA).

Seven proposed rules have been issued to implement FSMA. The first two rules, Preventative Controls-Human Food and Preventative Controls-Food for Animals, have been published with a third rule, Produce Safety, publication soon to come.

The Preventative Controls-Human Food rule spells out updated current Good Manufacturing Practice (cGMP) standards and requires legally defined “facilities” to conduct a hazard analysis, develop a written food safety plan, and implement preventative controls that mitigate identified food safety hazards. The population of establishments legally considered a “facility” and subject to the new rule is not identical to the population of Wisconsin-licensed food processing plants, dairy plants, and food warehouses because several state-licensed firms may be “qualified facilities” and therefore not subject to large parts of the new rule. Many state-licensed food warehouses will not be qualified facilities but will fall under modified requirements in the rule intended specifically for warehouses. This situation could lead to Wisconsin firms being subject to differing federal and state food safety rules resulting in state inspectors having to learn additional regulations to be enforced when conducting FDA-contract inspections. Additionally, it is hoped that full compliance with the Pasteurized Milk Ordinance will be equated by the FDA as compliance with the rule, but definitive guidance on this matter is unlikely for several months.

Wisconsin Agricultural Statistics Services (WASS) Report

Greg Bussler, State Statistician, updated the Board on the following:

- Production Report
 - In September, 2.36 billion pounds of milk were produced in Wisconsin.
 - Milk production in 23 major states totaled 15.6 billion pounds.

- As of November 1, 2015, Wisconsin had 9,737 milk cow herds, down 399 herds since November 2014.
- Price Report
 - September price of \$17.90 per hundredweight of milk.
 - Price of corn sold for \$3.58 per bushel.
 - Soybean price sold for \$8.62 per bushel.
 - Alfalfa hay sold for \$100 per ton, down \$50 per ton since last September.
- November Crop Production Report
 - Wisconsin corn production is estimated to yield 165 bushels per acre, up 9 bushels up from 2014.
 - US corn production is forecasted at 13.7 billion bushels, down 4% from last year's record production.
 - Wisconsin soybean production is estimated to reach 93.0 million bushels, up 18% from 2014.
 - US soybean yield is forecasted to average 48.3 bushels per acre, up .8% bushels from last year's production.
 - Potato Production in Wisconsin is estimated at 29.4 million per hundredweight, up 12% from 2014.
 - Next Crop Production Report will be released on Tuesday, January 12, 2016.
- Crop Progress Report
 - Corn harvested at 64% with wet conditions and drying costs having delayed harvest in Wisconsin.
 - Soybean harvested at 93% in Wisconsin.
 - Top soil moisture rated at 81% adequate.
- 2014 Organic Survey Results
 - The U.S. release is 550 pages of data with Wisconsin organic highlights combined into a four page release, available on NASS website.
 - Wisconsin ranked second in the number of organic farms with 1, 228 farms. The average sales per farm were \$164,000. Total organic sales in Wisconsin accounted for \$132.8 million.
 - The average size of an organic farm in Wisconsin in 2014 was 166 acres compared to 260 acres for U.S. organic farms.
 - Wisconsin produced 10% of the organic cow's milk sold in the U.S. in 2014 with an average price of \$30.94 per hundredweight compared to \$24.50 per hundredweight for all other milk types.
 - Organic vegetables, potatoes, and melons grown in the open netted \$17.4 million in 2014.
 - Production expenses for Wisconsin's organic farms averaged \$111,226 compared to \$280,722 for all U.S. organic farms.
- 2015 Wisconsin Agricultural Statistics Book
 - Hardcopy will be available in early December and is also available online.

**Division of Trade & Consumer Protection
(Report)**

Frank Frassetto, Division Administrator for the Division of Trade & Consumer Protection, along with Michelle Reinen, Bureau Director for the Consumer Protection Bureau, presented a Division Report to the Board.

The Bureau of Weights and Measures, which was created from the merger of the Department of Safety and Professional Services (DSPS) underground tank storage program in 2013, has focused on consolidating the two programs together, cross-training the inspectors, and putting the necessary elements in place for enforcing statutes. The Bureau finished cross-training their staff in December 2013 with the new team of field inspectors producing over 200 violations, resulting in \$105,000 in forfeitures.

Ms. Reinen discussed several recent judgments against companies violating the home improvement contractor law and the No Call list. Other recent enforcement actions included: consumer fraud, electronic communications, octane violations, and six underground storage tank cases that were referred to the Department of Justice.

**State Pollinator Protection Plan
(Report)**

Liz Meils, from the Bureau of Plant Industry, and Mike Murray, from the Bureau of Agrichemical Management, both from the Division of Agricultural Resource Management, presented a report the Board regarding the State Pollinator Protection Plan.

Wisconsin's Pollinator Protection Plan was created as an educational resource for Wisconsin agricultural stakeholders interested in improving the health and habitat of managed and wild pollinators. Wisconsin agricultural stakeholders include: bee keepers, fruit growers, private and commercial pesticide applicators, field and commodity crop farmers, commercial flower growers, tree nursery growers, landscape maintenance companies, and conservation groups. The Pollinator Protection Plan, made in partnership with UW Madison, is a voluntary set of actions that improve the public understanding of pollinator health, issues, and actions that can affect pollinators, and increases communication among stakeholder groups, scientists, agencies, and non-governmental organizations.

The Pollinator Protection Plan will be finalized in late November, available for public comment in January 2016, and fully published in February 2016.

**ATCP 21- Plant Inspection and Pest Control- Emergency
(Blanket Scope Statement)**

Shahla Werner, Plant Protection Section Chief for the Bureau of Plant Industry in the Division of Agricultural Resource Management, presented a blanket Scope Statement to the Board relating to ch. ATCP 21, Plant Inspection and Pest Control.

This umbrella Scope Statement allows future emergency rules to be enacted in a timely manner that create county, multi-county, township, or multi-township quarantines for an exotic plant pest where the pest is detected. Examples include cases of Emerald Ash Borer (EAB), Hemlock Woolly Adelgid (HWA), and Thousand Cankers Disease (TCD). The quarantine will prohibit the movement of all articles potentially harboring these damaging pests. A federal quarantine may take effect up to six months after a formal submission by the state plant regulatory official.

This Scope Statement will expire at one year's time and a new Scope Statement will need to be approved to continue authorization of emergency rulemaking related to exotic pest quarantines

Motion

Dennis Badtke made a motion, seconded by Doug Wolf, to approve the emergency blanket Scope Statement of ch. ATCP 21. Motion approved unanimously.

**Department Information Technology Bureau
(Report)**

Karen Arriola, Information Technology (IT) Bureau Director within the Division of Management Services, along with Larry Cutforth, Agency GIS Coordinator, presented a PowerPoint report on the Bureau's recent activities to the Board.

With the recent addition of the Storage Tank Regulation Program and the Veterinary Examining Board to the Agency, the IT Bureau has been busy converting these new programs to the Department's enterprise licensing platform. The Bureau also recently completed adding several existing agency programs onto the enterprise licensing platform such as: Farm Raised Deer Release, Complaint/Investigative Tracking System, and the Weights and Measures Credentialing, Training, and Exams Program.

The Department GIS program supports 16 agency web maps, 40 GIS users, GPS data collection, and analysis projects. GIS, meaning Geographic Information System, provides tools to create, analyze, and share geographic information in order to answer questions and make decisions.

GIS often integrates multiple layers into one map. The map may show: parcels, aerial photography, demographics, land ownership, land use, and soils. GIS maps are often used to allow flexible mapping, to identify patterns, and can be used to simulate emergency scenarios.

The Department GIS team recently aided the emergency response team during the avian influenza outbreak, and supports the 590 nutrient management and well constructor maps, as well as the weights and measures web map.

The Department GIS goals include:

- ArcGIS Online- simple web maps and story maps.
- Inspector territories after DFS/DHS merger.
- Growth modeling for farmland preservation planning.
- Crowdsourcing crop condition information.

ATCP 1- Administrative Orders and Contested Cases (Scope Statement)

Karley Downing, Chief Legal Counsel within the Office of the Secretary, presented the Scope Statement relating to the rule ch. ATCP 1 to the Board.

The proposed rule would amend ch. ATCP 1, to allow division administrators or staff to issue most of the special orders under s. ATCP 1.03(2). This will allow for clarification of the Department Secretary's responsibility to hear any appeal of a special order under s. ATCP 1.06.

Currently, under s. ATCP 1.03(2), some types of orders may be issued by the Department's division administrators or staff, while others may only be issued by the Department's Secretary or designee. Generally, all of these orders may be appealed under s. ATCP 1.06.

The authority to grant or deny a request for hearing rests with the Secretary, under s. ATCP 1.06(3). The final decision maker for any contested case is either the Secretary, or a designee appointed by the Secretary, as defined in s. ATCP 1.01(13). If the Secretary, or his designee, is the only person who may issue many of the typical special orders of the Department, this precludes the Secretary from exercising appellate jurisdiction in any contested case hearing where he or she has already signed the initial order. This is a specific duty of the Secretary, which should not be abrogated by rule. On the other hand, if the rule is amended, allowing special orders to be issued by the division administrator, the Secretary may then exercise the duty to oversee any division's action by granting and deciding a contested case hearing, if the special order is appealed.

Motion

Nicole Hansen made a motion, seconded by Miranda Lies, to approve the Scope Statement of ch. ATCP 1. Motion approved unanimously.

Board Member Reports

Dean Strauss- Harvest is complete at Majestic Crossing Dairy with some field work left. This year, Dean saw very high wheat, bean, and grain average yields, which was a blessing but it did soften the market price. Dean enjoyed visiting with Department Secretary Ben Brancel when he recently visited Majestic Crossing Dairy to test their new integrated manure management system. The digester will start processing manure next week.

Greg Zwald- Due the wet fall and continued rain, Greg is still working on finishing his corn harvest. Yield counts so far are showing to be positive.

Andy Diercks- Andy congratulated the Meuers on receiving the Aldo Leopold Conservation Award. Andy appreciated being part of the award process and requested a tour of the Meuers' farm at a future date. The potato harvest produced amazing yields. While high yields are good, the potato industry is now facing storage issues and could see an impact on pricing if there is too much supply available. Negotiations continue with the Legislature regarding high capacity wells, however a recent court decision may spur more movement and discussions in the future.

Nicole Hansen- The cranberry harvest is complete and Nicole has transitioned her focus into making management decisions based on the winter weather so as to protect her crop for next year's growing season. The cranberry yield in the state, and nationally, was down 10-15%, which could result in an increase in the market price. Nicole congratulated the Aldo Leopold Conservation Award recipients and recommended the Board take a tour of the recipient's farm in the future. Nicole welcomed the Department's new Chief Legal Counsel Karley Downing as well.

Dennis Badtke- Dennis enjoyed the pollinator report as he recently introduced bees to his soybean field and his yield returned 40% higher than previous years. In the land sales area, prices are holding strong but there seems to be a potential downturn in the rental market for land. Dennis will continue monitoring this over the winter months. Cropland prices continue to be variable throughout different parts of the state.

Doug Wolf- Harvest and field work are coming to end on the farm. The crop came in at record yields but due to the dry fall, the yield was not as high as originally expected.

Miranda Leis- Miranda congratulated the Aldo Leopold Conservation Award winners and was pleased to see them honored for their conservation work. Conservation practices are very crucial to Miranda's farm and surrounding area because of the land topography. The corn and bean harvest is complete with yields coming in slightly higher than expected. Within the past six months, the organic industry has been flooded with an increase in public interest, news, and demand for organic products and practices.

Secretary's Report

The Secretary introduced Karley Downing as the new Chief Legal Counsel for the Department of Agriculture, Trade and Consumer Protection. Ms. Downing grew up in Minnesota and was most recently Legal Counsel at the Department of Administration.

The Board received the 2014 Livestock Siting Technical Committee Report ("Report"). In the future, the Department will be bringing forth a Scope Statement regarding ch. ATCP 51, Livestock Facility Siting, to the Board that may incorporate many of the suggestions outlined in the Report or received from outside parties. Aligning Department rules with the Department of Natural Resource (DNR) rules, and the U.S. Department of Agriculture Natural Resource Conservation Service (NRCS) codes is very critical to create uniformity and clarity for the public. The NRCS will be finalizing the Nutrient Management Code 590 in the near future. This code will require changes to the Department's ch. ATCP 51, ch. ATCP 50 regarding Soil and Water Resource Management, the ch. 151 DNR regarding RunOff Management, and potentially the ch. 243 DNR regarding Animal Feeding Operations.

On November 4, 2015, the Department welcomed members of the Wisconsin Veterinary Examining Board to their first meeting at DATCP. The Board was transferred to the Department from Department of Safety and Professional Services in the last state budget. Both agencies continue to work together during this transition time. The Veterinary Examining Board determines the credentialing standards for veterinarians and veterinary technicians within the state and licenses close to 5,000 applicants each year.

Food Safety Division Administrator Steve Ingham, along with other Department staff, continue to work closely with the Department of Health Services (DHS) to transition inspection duties over to the Department effective July 1, 2016. The Governor's budget directed a transfer of activities related to the licensing and inspection of all restaurants, vending machines, food commissaries, licensed campgrounds, recreational camps, swimming pools, hotels, and rooming houses from DHS to DATCP.

The Secretary recently greeted members of the German American Chamber of Commerce at the Wisconsin Farm Bureau Federation in Madison. The Secretary spoke regarding producer fears regarding the Transatlantic Trade and Investment Partnership (TTIP). TTIP is a proposed free trade agreement between the European Union and the United States, with the aim of promoting multilateral economic growth. The American government considers the TTIP a companion agreement to the Trans-Pacific Partnership (TPP).

November 15, 2015, the Secretary participated in meetings of the Tri-National Agricultural Accord in Guadalajara, Jalisco, Mexico. The Tri-National Agricultural Accord brings together senior state and provincial agricultural officials of Canada, the United States, and Mexico to discuss important trade and development-related issues that impact the three nations. Topics included country-of-origin labeling (COOL), Grade "A" fluid milk equivalency standards, pesticides and pesticide use, genetically modified organisms (GMO) recognition, and trade issues.

The Secretary participated in the 21st Annual Dairy Sheep Association of America Symposium at the Pyle Center in Madison. Presenters include animal scientists, dairy sheep producers, veterinarians, sheep milk cheese makers, and marketers.

In early November, the Secretary visited Majestic Crossing Dairy in Sheboygan Falls, where Digested Organics' new Integrated Manure Management System (IMMS) was recently put in place. This system is designed to process 20,000 GPD (gallons per day) of manure and produce 12,000 GPD of clean water. DATCP Board member Dean Strauss is a managing partner of Majestic Crossing Dairy.

Wisconsin moved up nationally from its 12th place in agricultural exports to 10th place for 2015. However, Wisconsin agricultural export numbers themselves were actually lower than anticipated showing that agricultural exports nationally were depressed.

Future Schedule and Agenda Items

The Board is scheduled to meet December 16, 2015 in Madison.

Adjournment

By unanimous consent, the Board adjourned at approximately 1:41 pm.

Andy Diercks, Board Chair

Nicole Hansen, Secretary